Remarks

In the present response, claims 1 – 14 and 17 – 32 are presented for examination.

Claim Rejections: 35 USC § 101

Claims 13-20 and 28-32 are rejected under 35 USC § 101 as being directed to non-statutory subject matter. Applicants respectfully traverse.

Regarding claims 13-20, the Examiner argues that these claims are directed to a system based solely on software. Applicants respectfully disagree. Claim 13 expressly recites a server. A server is a "machine" as stated in 35 USC § 101. Claim 13 also recites a processor. Processors are a "machine" as stated in 35 USC § 101.

Claims 28-32 recites "means" language. A "means-plus-function" claim must be interpreted to claim "the corresponding structure, material, or acts described in the specification and equivalents thereof." 35 U.S.C. § 112, 6th paragraph. This limitation applies to patent examination. *See In re Donaldson*, 16 F.3d 1189 (Fed. Cir. 1994). In the *Donaldson* case, the Federal Circuit stated:

> Per our holding, the "broadest reasonable interpretation" that an examiner may give means-plus-function language is that statutorily mandated in paragraph six. Accordingly, the PTO may not disregard the structure disclosed in the specification corresponding to such language when rendering a patentability determination. *Id.*; *see also* M.P.E.P § 2181.

Accordingly, claims 28-32 must be interpreted in light of the disclosure. The first element of claim 28 recites a means for monitoring states of devices. The specification describes this means as a management server (see FIG. 1A, #100). A server is a "machine" as stated in 35 USC § 101. The other means elements in claim 28 include a messaging processor (see FIG. 1C, #300). Processors are a "machine" as stated in 35 USC § 101.

For at least these reasons, Applicants respectfully ask the Examiner to withdraw the rejections under 35 USC § 101.

Claim Rejections: 35 USC § 112

Claims 9 and 28-32 are rejected under 35 USC § 112 second paragraph, as being indefinite. Applicant respectfully asserts that this rejection is moot in view of the amended preamble in claim 21.

Regarding claim 9, the Examiner asserts that the claim is ambiguous because two different action steps are allegedly recited (i.e., one action in the step of identifying and one action in the step of performing). Applicants respectfully disagree with this claim interpretation. Claim 9 recites "the action steps." Use of antecedent basis (i.e., the term "the") requires that the action steps are the same. One claim element identifies action steps. The next claim element performs the action steps, and another claim element sends the action steps. In all three of these claim elements, the action steps are the same because use of antecedent basis.

Regarding claim 28-32, the Examiner asserts that the use of means makes the claims indefinite. Applicants respectfully disagree. As explained above, claims 28-32 must be interpreted in light of the disclosure. The first element of claim 28 recites a means for monitoring states of devices. The specification describes this means as a management server (see FIG. 1A, #100). Hence, the claim is not indefinite since the specification and drawings clearly show an embodiment for this means. The other means elements in claim 28 include a messaging processor (see FIG. 1C, #300). Hence, the claim is not indefinite since the specification and drawings clearly show an embodiment for these means.

For at least these reasons, Applicants respectfully ask the Examiner to withdraw the rejections under 35 USC § 112, second paragraph.

Claim Rejections: 35 USC § 103

Claims 1-32 are rejected under 35 USC § 103(a) as being unpatentable over US publication number 2003/0220899 (Numanoi) in view of US publication number 20040162843 (Ledru). Claim 20 is rejected under 35 USC § 103(a) as being unpatentable over Numanoi in view of Ledru and USPN 7,095,321 (Primm). These rejections are traversed.

Each of the independent claims recites one or more elements that are not taught or suggested in Numanoi in view of Ledru and Primm. These missing elements show that the differences between the combined teachings in the art and the recitations in the claims are great. As such, the pending claims are <u>not</u> a predictable variation of the art to one of ordinary skill in the art.

As one example, independent claim 1 recites determining whether the action required to correct the problem is performed automatically by a server and determining whether the action required to correct the problem is performed by an operator. The claim then recites automatically performing the action required to correct the problem by the server when approval from the operator is not required; and notifying the operator to perform the action to correct the problem when the operator is required to make a decision to correct the problem. The art of record does not teach these elements.

In Numanoi, agents in servers collect information concerning usage capacity. This information is transmitted to a management server for analysis. The management server then executes an action (such as moving data to another disk). Nowhere does Numanoi teach or even suggest determining whether the action required to correct the problem is performed by an operator. Further, nowhere does Numanoi teach or suggest notifying the operator to perform the action to correct the problem when the operator is required to make a decision to correct the problem. Again, Numanoi teaches that the management server corrects the problem.

Ledru teaches a user interface so a user can send a notification contract to a monitoring application. This notification contract includes criteria under which the user wants to be notified by the monitoring application. Nowhere does Ledru teach or even suggest determining whether the action required to correct the problem is performed by an operator. Further, nowhere does Ledru teach or suggest notifying a user to perform an action to correct a problem when the user is required to make a decision to correct the problem.

The differences between the claims and the teachings in the art are great since the references fail to teach or suggest all of the claim elements. As such, the pending claims are <u>not</u> a predictable variation of the art to one of ordinary skill in the art.

For at least these reasons, the claims are allowable over the art of record.

CONCLUSION

In view of the above, Applicant believes that all pending claims are in condition for allowance. Allowance of these claims is respectfully requested.

Any inquiry regarding this Amendment and Response should be directed to Philip S. Lyren at Telephone No. 832-236-5529. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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